

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17498 of 2024

Om Prakash Choubey Son of- Late Kamakhya Choubey, Resident of-
Sonbarsa, P.O.- Harsidhi, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Panchyati Raj, Patna.
2. The Director, Department of Panchyati Raj, Government of Bihar, Patna.
3. The Commissioner, Tirhut Commissioner/Division, Muzaffarpur.
4. The District Magistrate, East Champaran, Motihari.
5. The District Panchyati Raj Officer, East Champaran, Motihari.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Nilesh Kumar Pandey, Advocate.
For the Respondent/s : Government Pleader (22)

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 21-11-2024

Heard learned counsel appearing on behalf of the
petitioner and learned counsel for the State.

2. The petitioner in paragraph no. 1 of the present
writ petition has sought, inter alia, following relief(s), which is
reproduced hereinafter:-

“(i) For quashing of the order dated 18.01.2023 passed in Service Appeal Case No. 59/2020 by Respondent No.3 (Annexure P/10) whereby the appeal of the petitioner has been rejected on technical ground of delay without considering the merit of the case.

(ii) For quashing of the order dated 03.07.2015 contained in Memo No. 653 passed by Respondent No. 4 (Annexure P/7) whereby and where under the petitioner was illegally and arbitrarily held guilty of charges leveled against him in the departmental proceeding and imposed the punishment of stoppage of 100% pension for life time under rule 43(b) of the Bihar Pension Rules, 1950.

(iii) Consequent upon the quashing of the aforesaid orders dated 18.01.2023 (Annexure P/10) and 03.07.2015 (Annexure P/7) for a direction to the respondents to grant all the consequential benefits including the payment of pension etc. to the petitioner.

(iv) For any other relief(s) or consequential



relief(s) to which the petitioner may be found entitled to in the facts and circumstances of this case.”

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is aggrieved by the penalty order dated 03.07.2015 contained in Memo No. 653 passed by the District Magistrate, East Champaran, Motihari, whereby the petitioner has suffered punishment of stoppage of 100% pension for life time under Rule 43(b) of the Bihar Pension Rules, 1950. The departmental proceeding was carried out after the superannuation of the petitioner as per the provision of Rule 43(b) of the Bihar Pension Rules. Aggrieved by the said penalty order, the petitioner had preferred C.W.J.C. No. 12989 of 2015. This Court vide judgment dated 05.01.2016 upon consideration of the pleadings made in the writ petition and the counter affidavit, directed the petitioner to avail remedy of appeal under Rule 25 of the Bihar CCA Rules, 2005. Learned counsel submitted that the petitioner has pleaded in his memo of appeal that the inquiry report was not furnished to the petitioner which is failure of the mandate of Article 311 (2) of the Constitution of India, as well as, Rule 17 of the Bihar CCA Rules. Learned counsel assailing the appellate order dated 18.01.2023 passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur submitted that in a very mechanical manner, the appeal was rejected on technical ground that the



same is not maintainable in accordance with the provision of Rule 25 of the Bihar CCA Rules, 2005. Learned counsel in this background submitted that the law is well settled in so far as the holding of inquiry and non-supply of the inquiry report to the petitioner is concerned. In support, he referred to **Civil Appeal No. 8435 - 8436 of 2024 (Mool Chandra Vs. Union of India & Anr.)**. On these ground, learned counsel submitted that as there has been violation of principle of natural justice by not providing the petitioner any opportunity to defend the penalty order dated 03.07.2015 and the appellate order dated 18.01.2023, are fit to be interfered with and set aside.

4. *Per contra*, Mr. K. K. Singh, learned counsel appearing on behalf of the respondents submitted that the petitioner managed to remain in service in spite of the fact that the charge memo was served to the petitioner on 27.08.2004, as it would appear from Annexure-1 to the writ petition and the penalty order was passed on 03.07.2015 after the petitioner had retired on 05.07.2014. Action was taken against the petitioner as per the prescribed Rule 43(b) of the Bihar Pension Rules after serving him notice for continuation of departmental proceeding against him. Learned counsel further submitted that against the order of penalty dated 03.07.2015, the petitioner had approached this Court by filing C.W.J.C. No. 12989 of 2015 and



this Court without entertaining the writ petition on merits, had directed the petitioner to file an appeal before the appellate authority. Learned counsel submitted that in spite of the order passed by this Court, the petitioner remained indolent and had preferred appeal in the year 2020 after much delay against the time limit provided under Rule 25 of the Bihar CCA Rules, 2005. Learned counsel submitted that even from bare perusal of the pleading made in the memo of appeal, it would appear that no sufficient reason has been assigned on behalf of the petitioner as to why he could not prefer an appeal before the appellate authority within time. The appellate authority without committing any illegality has dismissed the appeal on the ground of limitation and the same does not require to be interfered in any manner. In the above background, learned counsel submitted that the petitioner at such a belated stage is himself responsible for having not requested before the disciplinary authority for providing inquiry report or any irregularity which he could find in conduct of the disciplinary proceeding either before the disciplinary authority or before this Hon'ble Court in C.W.J.C. No. 12989 of 2015. In this background, learned counsel further submitted that the Apex Court has decided that the writ court should not act as a court of appeal and go through the disputed question of fact and



considering the limited jurisdiction in view of the fact that petitioner has not been able to point out any perversity in the order either passed by the disciplinary authority or by the appellate authority, hence no interference is required.

5. Having considered the rival submissions made on behalf of the parties, as well as, the fact that the petitioner had retired on 05.07.2014, the departmental proceeding pending against the petitioner was converted into Rule 43(b) of the Bihar Pension Rules for which the petitioner was noticed on 01.08.2014 and the penalty order was passed after one year on 03.07.2015. Aggrieved with the order of penalty, the petitioner filed C.W.J.C. No. 12989 of 2015 before this Court which was disposed of vide judgment dated 05.01.2016 granting liberty to the petitioner to approach the appellate authority for the relief as prayed for in the said writ petition. The petitioner preferred memo of appeal on 13.03.2020 which has been brought on record by way of Annexure P/9. I find that neither there is any pleading in the memo of appeal with respect to sufficient reasons for delay in preferring appeal nor the said memo of appeal is accompanied with any petition for condonation of delay as per the provision of Rule 25 of the Bihar CCA Rules, 2005. The appellate order was passed on 18.01.2023 by rejecting the appeal of the petitioner on the ground of delay and



laches. I find that the petitioner himself is responsible for not exercising his right in time and in that view I find that no interference is required so far as the order passed by the disciplinary authority or the appellate authority is concerned. So far as the technical plea raised by the petitioner that he has taken one of the ground in memo of appeal that neither any departmental inquiry was held nor the petitioner was provided with a copy of the inquiry report. To this, I find that the said fact was not raised in the earlier writ petition being C.W.J.C. No. 12989 of 2015, which was disposed of vide order dated 05.01.2016, nor the petitioner has brought on record any evidence to support his case that he had raised such objection before the disciplinary authority for providing opportunity in course of departmental inquiry if any, held in case of the petitioner nor he had requested the disciplinary authority to provide a copy of the inquiry report, if such departmental inquiry was held behind his back.

6. The admitted facts is that as the departmental proceeding could not be concluded within the service period of the petitioner, the petitioner was noticed under Rule 43(b) for conversion of the departmental proceeding after his retirement.

7. I find that no irregularity has been committed either by the disciplinary authority or by the appellate authority



so far as the conduct of the disciplinary proceeding against the petitioner is concerned. I further take note of the fact that due opportunity of hearing was given to the petitioner in conduct of the disciplinary proceeding in absence of any objection by the petitioner in time before the disciplinary authority and also take note of the fact that the disciplinary action was taken against the petitioner way back in year 2004 and this Court can only say that the petitioner any how managed to linger the departmental proceeding for reason best known to him and the authorities concerned.

8. I find no merits in the writ petition. The same is dismissed.

9. There shall be no order as to costs.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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